

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

NANCY KEENAN

STATE OF MONTANA

\* \* \* \* \*

DON FERGUSON,

Appellant,

**VS .**

OSPI 182-89

**DECISION AND ORDER**

BOARD OF TRUSTEES,  
YELLOWSTONE COUNTY SCHOOL  
DISTRICT NO. 2,  
BILLINGS PUBLIC ELEMENTARY  
SCHOOLS,

Respondent .

\* \* \* \* \*

This matter is before the State Superintendent of Public Instruction on appeal from the December 5, 1989, decision of the County Superintendent dismissing Ferguson's appeal for lack of jurisdiction.

## STATEMENT OF THE CASE

On April 8, 1989, the Trustees ~~of~~ Yellowstone County School District No. 2 decided not to renew the teaching contract ~~of~~ Don Ferguson, a tenured teacher with the District. Ferguson was notified and received a hearing before the Board. Following the decision of the Board, Ferguson filed a timely appeal with the County Superintendent under 20-3-<sup>2</sup>~~10~~10, MCA.

The County Superintendent issued a notice setting the hearing for 10:00 a.m. on May 31. Following issuance *of* the Notice of Wearing, the parties entered into settlement negotiations. The County Superintendent continued the hearing scheduled for May 31

1 indefinitely pending results of the negotiations. While  
2 negotiations were continuing, Ferguson issued notices to take the  
3 depositions of four District administrators on August 24 and 25.  
4 Prior to the dates scheduled for the depositions, the parties  
5 reached resolution of all issues and agreed on the terms of a  
6 settlement. The settlement agreement between the District and  
7 Ferguson was signed on August 25, 1989. The parties agreed to  
8 cancel the scheduled depositions.

9 On August 25, the School District formally accepted the  
10 settlement and rescinded its acceptance of Superintendent Eble's  
11 recommendation that Don Ferguson's contract not be renewed for  
12 1989-1990. The Board accepted Ferguson's letter of resignation.

13 The August 30th edition of The Billings Gazette contained an  
14 article on the District's decision to enter into a settlement  
15 agreement with Ferguson. The article was based on an interview  
16 with Superintendent Eble. By letter of August 30, 1989, Ferguson  
17 notified the District of his intention to rescind the settlement  
18 agreement alleging that Superintendent Eble's interview with the  
19 Gazette violated paragraph five (5) of the Agreement between the  
20 parties. Paragraph Five required that the parties, their agents  
21 and representatives "not comment on or discuss with anyone any  
22 aspect of Ferguson's termination" except to the "extent that the  
23 terms of this Settlement Agreement are a matter of public record."

24 On August 30, Ferguson also re-noticed the depositions of the  
25 four school administrators for September 6 and 7. On September 5,  
1989, the District moved the County Superintendent to dismiss

1 Ferguson's appeal on the grounds that the case had been fully  
2 settled on its merits and mutual releases exchanged and to issue  
3 a protective order staying **all** discovery proceedings until  
4 adjudication of the School District's motion to dismiss.

5 The parties briefed two issues to the County Superintendent:

- 6 1. Whether the County Superintendent had jurisdiction  
7 to hear and decide the rescission issue; and if yes,
- 8 2. Whether the Settlement Agreement had been rescinded.

9 The County Superintendent issued her ORDER on November 6, **1989**  
10 concluding "she had no jurisdiction to do anything other than to  
11 dismiss the appeal for lack of jurisdiction in that a settlement  
12 agreement has been reached." Ferguson filed a Notice of Appeal  
13 with the State Superintendent on December 6, 1989.

14 Having reviewed the record and the briefs of the parties, this  
15 Superintendent now makes the following decision.

16 **DECISION AND ORDER**

17 The State Superintendent of Public Instruction has  
18 jurisdiction of this appeal under 20-3-107, MCA.

19 The County Superintendent has jurisdiction to determine  
20 whether appellant Ferguson was entitled to rescind the Settlement  
21 Agreement between the District and himself. The ORDER of the  
22 County Superintendent dismissing this matter for lack of  
23 jurisdiction is affected by an error of law and is hereby reversed.

24 This case is remanded to the County Superintendent with  
25 instructions to receive evidence and decide whether Ferguson had  
a right to rescind the Settlement Agreement with the District. If

1 the County Superintendent decides that Ferguson had the right to  
2 rescind, she will accept evidence and decide whether or not the  
3 Settlement Agreement was rescinded. If she decides that the  
4 Settlement Agreement was rescinded, she will deny the District's  
5 notions and hold a hearing in accordance with the rules of  
6 procedure for school controversies.

#### 7 MEMORANDUM OPINION

8 Appellant Ferguson contends that the County Superintendent's  
9 conclusion that she lacks jurisdiction to decide the rescission  
10 issue is an error of law and must be reversed. Appellant correctly  
11 argues that Canyon Creek Education Association v. Board of  
12 Trustees, 47 St. Rptr. 93 (1990) controls the issue of jurisdiction  
13 in this matter. Canyon Creek affirms and explains Throssell v.  
14 Board of Trustees of Gallatin County School District No. 7, \_\_\_ St.  
15 Rptr. \_\_\_, 757 P.2d 348 (1988) and specifically overrules McBride  
16 v. School District No. 2, 88 Mont. 210, 290 Pac. 252 (1930).

17 The Montana Supreme Court in Canyon Creek affirmed its  
18 decision in Throssell and stated:

19 [U]nless a claimant's cause of action falls under the  
20 three exceptions enumerated in Throssell, he/she must  
21 present his/her claim to the County Superintendent,  
invoking and completing the administrative process first  
before resorting to the courts."

22 The three exceptions enumerated in Throssell are:

- 23 1. Where state agencies have been directly granted  
24 primary jurisdiction resulting in decisions outside the  
25 administrative exhaustion doctrine;
2. Where the matter is governed by a specific statute;

1 and

2 3. Where the Board has acted without or in excess of  
3 its jurisdiction.

4 Determination of a party's right to rescind a contract does  
5 not fall within any of the three exceptions delineated in  
6 Throssell.

7 The County Superintendent's jurisdiction of the appeal  
8 continued during the time the parties were negotiating to settle  
9 the dispute. The County Superintendent had taken no affirmative  
10 action to terminate her jurisdiction prior to the time Ferguson  
11 notified the District of his right to rescind and his decision to  
12 exercise that right. The District's motion to dismiss followed  
13 Ferguson's attempt to exercise his claimed right of rescission.

14 The decision of the County Superintendent dismissing the  
15 appeal for lack of jurisdiction is hereby reversed.

16 DATED this 25 day of July, 1990.

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Nancy Keenan  
NANCY KEENAN

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CERTIFICATE OF SERVICE

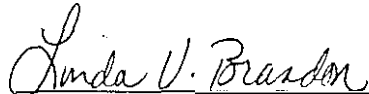
This **is** to certify that on this 2<sup>nd</sup> day of July, 1990, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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